



1           3.       This motion is filed to stay the December 22, 2023 order requiring the disclosure of  
2 documents pending appeal to preserve the government's right to seek appellate judicial review and to  
3 preserve the Ninth Circuit's ability to consider the issues presented in this appeal.

4           4.       On February 15, 2024, DOL filed a notice of appeal of the Court's December 23, 2023  
5 Order. Dkt. No. 57. That order currently requires release on February 20, 2024. February 19, 2024, is a  
6 federal holiday. DOL requests that this Court issue a decision on its request for stay by February 16,  
7 2024 so that, in the event a stay is denied, DOL can seek a stay in the Ninth Circuit pursuant to Federal  
8 Rule of Appellate Procedure 8(a)(2). In the Court denies a stay pending appeal, DOL requests that the  
9 Court continue the release date by seven days so that DOL can file a motion for stay in the Ninth  
10 Circuit.

11          5.       On Tuesday February 13, 2024, I reached out to counsel for Plaintiffs to try to schedule a  
12 phone call. By email, counsel indicated that they were too busy to talk that day. By return email, I  
13 explained that the disclosure deadline was approaching, the appeal decision was still under  
14 consideration, and that DOL was requested a stay pending appeal in the event a notice of appeal was  
15 filed. Counsel for Plaintiffs declined, indicated that they were not aware of any genuine exigency or  
16 emergency requiring an extension, and to the extent DOL sought an open-ended stay there was "no  
17 reason why that request could not have been made" at the time of the original request for an extension.

18          6.       After filing DOL's notice of appeal, the undersigned emailed counsel for Plaintiffs again  
19 to ask that Plaintiffs stipulate to a stay pending appeal, or in the alternative, to an interim continuance of  
20 the release deadline to allow the court additional time to consider an emergency motion to stay. I  
21 notified Plaintiffs that I intended to ask for the Court for a decision on DOL's motion to stay by  
22 tomorrow, February 16, 2024, and requested a response by 4:00 p.m. today.

23          7.       At 4:20 p.m., counsel for Plaintiffs responded that they were not prepared to stipulate at  
24 this time and were continuing to research the matter. They also objected to a decision being made on the  
25 motion tomorrow. In response to that email and in an attempt to address Plaintiffs' stated objection, I  
26 proposed by email that Plaintiffs stipulate to a short extension of the release deadline to allow the  
27 motion to heard on a less abbreviated timeline. Plaintiff's counsel declined that request. A true and  
28 correct copy of the email chain with my requests and Plaintiffs' counsel's responses is attached hereto as

1 Exhibit A.

2 I declare under penalty of perjury that the foregoing is true and correct. Signed this 15th day of  
3 February, 2024, in San Francisco, California.

4 /s/ Pamela T. Johann  
5 PAMELA T. JOHANN  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit A

**From:** [Therese Y. Cannata](#)  
**To:** [Johann, Pamela \(USACAN\)](#); [Aaron R. Field](#)  
**Cc:** [Victoria Baranetsky \(vbaranetsky@revealnews.org\)](#); [Zachary E. Colbeth](#); [Danielle Ott](#)  
**Subject:** [EXTERNAL] Re: Stay pending appeal  
**Date:** Thursday, February 15, 2024 4:44:06 PM  
**Attachments:** [image002.png](#)

---

Dear Pam,

Aaron stepped away for a moment, but I am informed on these issues. To your question, we have nothing further to add at this time. We will, of course, review and respond to your moving papers as permitted by the Court.

With regards,

Therese

---

Therese Y. Cannata  
Attorney at Law



100 Pine Street, Suite 350  
San Francisco, California 94111

**CONTACT INFORMATION:**

- Reception: 415.409.8900
- Direct Dial: 415.842.2321
- Email: [tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)

---

For further information about our firm and directions to our San Francisco and Walnut Creek offices, please call our office or visit our Firm Website at [www.cofolaw.com](http://www.cofolaw.com)

This electronic mail transmission is intended only for the addressee(s) shown above. It may contain information that is confidential, or otherwise protected from disclosure as an attorney-client or attorney work-product privileged communication. Any review, dissemination or use of this transmission or its contents by persons other than the addressee(s) is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at (415) 409-8900, and destroy this document.

**Please consider the environment before printing this e-mail**

---

**From:** "Johann, Pamela (USACAN)" <Pamela.Johann@usdoj.gov>  
**Date:** Thursday, February 15, 2024 at 4:26 PM

**To:** "Aaron R. Field" <afield@cofolaw.com>

**Cc:** "Victoria Baranetsky (vbaranetsky@revealnews.org)" <vbaranetsky@revealnews.org>, "Therese Y. Cannata" <tcannata@cofolaw.com>, "Zachary E. Colbeth" <zcolbeth@cofolaw.com>, Danielle Ott <dott@cofolaw.com>

**Subject:** RE: Stay pending appeal

Aaron,

If the disclosure deadline is not stayed in this case, it will effectively deprive the government of an opportunity to appeal the order.

If you do not agree to a decision on DOL's emergency motion being made tomorrow, then will you agree to an extension of the release deadline to allow the motion to be heard within a reasonable time? Note that Judge Alsup's posted schedule indicates that he is not available next week.

Please let me know ASAP. I will need to file my motion in the next 15 minutes.

Thank you,  
Pam

Pam Johann  
Assistant United States Attorney, Deputy Civil Chief  
Northern District of California  
T: 415-436-7025

---

**From:** Aaron R. Field <afield@cofolaw.com>

**Sent:** Thursday, February 15, 2024 4:20 PM

**To:** Johann, Pamela (USACAN) <PJohann@usa.doj.gov>

**Cc:** Victoria Baranetsky (vbaranetsky@revealnews.org) <vbaranetsky@revealnews.org>; Therese Y. Cannata <tcannata@cofolaw.com>; Zachary E. Colbeth <zcolbeth@cofolaw.com>; Danielle Ott <dott@cofolaw.com>

**Subject:** [EXTERNAL] Re: Stay pending appeal

Pam,

The cases you have cited do not establish your entitlement to stay and are distinguishable. Both involved law enforcement investigations, one of which related to 9/11. Both involved questions of law subject to more reasonable dispute than the one here, which has repeatedly been resolved adversely to your client but your client, the Department of Labor, insisted on relitigating yet again in this case. And, importantly, neither stands for the proposition that a stay is inevitable or that DOL is entitled to a stay as a matter of right. Both indicate a stay is available only on a showing that it is consistent with the balance of equities. We are

continuing to research the matter; however, we are not prepared to stipulate based on distinguishable cases on the timeline in your e-mail.

We also object to a decision being made on your motion tomorrow, because we will not have had a reasonable opportunity to review the matter or respond by that time.

Please include all of our e-mails in this e-mail chain in any submission that you provide to the Court.

Regards,

Aaron

---

Aaron Field

Attorney at Law



100 Pine Street, Suite 350

San Francisco, California 94111

Telephone (Firm): 415.409.8900

Telephone (Direct): 415.842.2285

Fax: 415.409.8904



Please consider the environment before printing this e-mail

---

For further information about our firm or directions to our San Francisco or Walnut Creek offices, please visit our firm website at [www.cofolaw.com](http://www.cofolaw.com)

---

This electronic mail transmission is intended only for the addressee(s) shown above. It may contain information that is confidential or otherwise protected from disclosure as an attorney-client or attorney work-product privileged communication. Any review, dissemination, or use of this transmission or its contents by persons other than the addressee(s) is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at (415) 409-8900, and destroy this document.

---

**From:** Johann, Pamela (USACAN) <[Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov)>

**Sent:** Thursday, February 15, 2024 2:54 PM

**To:** Aaron R. Field <[afield@cofolaw.com](mailto:afield@cofolaw.com)>

**Cc:** Victoria Baranetsky (<[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)> <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>; Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>

**Subject:** RE: Stay pending appeal

Re-sending the email below to the larger group—I just realized that my earlier email was sent only to Aaron.

Given the imminence of the disclosure date, the need to seek relief in the Ninth Circuit if the district court doesn't grant a stay, and Judge Alsup's unavailability next week, we are planning to file an Emergency Motion **today by 4:30**. We will request a stay pending appeal, or in the alternative a seven-day continuance to allow us time to make a motion in the Ninth Circuit. We will ask Judge Alsup for a decision by tomorrow, **February 16**. We will represent that we sought a stipulation from you but could not get a position before needing to file.

If you are amenable to a stipulation, please let me know by 4 pm today.

Thank you,  
Pam

**Pam Johann**  
Assistant United States Attorney, Deputy Civil Chief  
Northern District of California  
T: 415-436-7025

---

**From:** Johann, Pamela (USACAN)  
**Sent:** Thursday, February 15, 2024 12:04 PM  
**To:** Aaron R. Field <[afield@cofolaw.com](mailto:afield@cofolaw.com)>  
**Subject:** Stay pending appeal

Aaron,

As you know, DOL has filed a notice of appeal of the district court's ruling. In light of this, we are requesting that Plaintiffs stipulate to a stay of the disclosure order pending appeal to provide DOL the opportunity for appellate review. "Stays are routinely granted in FOIA cases." *Ctr. for Nat'l Sec. Studies v. DOJ*, 217 F. Supp. 2d 58, 58 (D.D.C. 2002). Disclosure would moot the appeal and would result in an irreparable injury to the government. *See John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers). Stay of the disclosure order is therefore necessary to preserve the Government's right to appellate review, which presents a "compelling justification" for the grant of a stay. *Id.*

In the event you do not agree to a stay, we will file an emergency motion for a stay in district court



and, if necessary, in the Court of Appeals. We will need to ask for an immediate decision by the Court given the current disclosure date. For that reason, we would request in the alternative that you agree to an interim continuance to allow the court additional time to consider our motion.

Please let me know as soon as possible whether you will stipulate to a stay of the disclosure order.

Thank you,  
Pam

**Pam Johann**  
Assistant United States Attorney, Deputy Civil Chief  
Northern District of California  
T: 415-436-7025

---

**From:** Aaron R. Field <[arfield@cofolaw.com](mailto:arfield@cofolaw.com)>  
**Sent:** Wednesday, February 14, 2024 9:35 PM  
**To:** Johann, Pamela (USACAN) <[PJohann@usa.doj.gov](mailto:PJohann@usa.doj.gov)>; Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>  
**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>  
**Subject:** Re: [EXTERNAL] Re: Available for a call?

Pam,

With regret, we again respectfully decline.

We generally do our best to be flexible about deadlines, as our prior stipulations in this case show, especially when necessary to address genuine exigencies and emergencies. However, we are not aware of any genuine exigency or emergency here. Certainly, DOL has mentioned none. In December, despite years of pre-lawsuit delays, DOL asked for, we agreed to, and the Court ordered a generous, 32-day extension of DOL's disclosure deadline, more than doubling its time to disclose. The explicit purpose was to allow DOL to decide whether to appeal. DOL has not explained how or why the extension it had asked for has suddenly come up short. Nor has it told us any other reason why it cannot, or should not be expected to, comply with the deadline that it asked for, especially given DOL's last-minute timing.

Further complicating a stipulation, DOL has not yet clearly stated what it plans to ask for in a potential motion. If DOL plans to seek the kind of open-ended "stay" it proposed yesterday, that is concerning, since there is no reason why that request could not have been made immediately after the order was issued or in place of DOL's initial extension request.

We hope that, instead of continuing to delay disclosure or relitigating the same issues it has for years, DOL will simply comply with the Court's order, which got the "commercial" issue

right.

Regards,

Aaron

---

Aaron Field

Attorney at Law



100 Pine Street, Suite 350

San Francisco, California 94111

Telephone (Firm): 415.409.8900

Telephone (Direct): 415.842.2285

Fax: 415.409.8904



Please consider the environment before printing this e-mail

---

For further information about our firm or directions to our San Francisco or Walnut Creek offices, please visit our firm website at [www.cofolaw.com](http://www.cofolaw.com)

---

This electronic mail transmission is intended only for the addressee(s) shown above. It may contain information that is confidential or otherwise protected from disclosure as an attorney-client or attorney work-product privileged communication. Any review, dissemination, or use of this transmission or its contents by persons other than the addressee(s) is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at (415) 409-8900, and destroy this document.

---

**From:** Johann, Pamela (USACAN) <[Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov)>

**Sent:** Wednesday, February 14, 2024 4:16 PM

**To:** Aaron R. Field <[afield@cofolaw.com](mailto:afield@cofolaw.com)>; Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>

**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>

**Subject:** RE: [EXTERNAL] Re: Available for a call?

Aaron,

As you know, stays pending appeal are routinely granted in FOIA cases because any disclosure would necessarily moot the appeal. In light of your position, we will be filing an emergency motion with the court. Would you be willing to agree to a shorter continuance to allow this motion to be briefed and decided on more than five days? Please get back to me by the end of the day so we can determine how to notice our motion.

Thank you.

Pam

Pam Johann

Assistant United States Attorney, Deputy Civil Chief

Northern District of California

T: 415-436-7025

---

**From:** Aaron R. Field <[arfield@cofolaw.com](mailto:arfield@cofolaw.com)>

**Sent:** Wednesday, February 14, 2024 4:04 PM

**To:** Johann, Pamela (USACAN) <[PJohann@usa.doj.gov](mailto:PJohann@usa.doj.gov)>; Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>

**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>

**Subject:** Re: [EXTERNAL] Re: Available for a call?

Pam,

In cases involving access to public records, prompt access is important and often essential to ensuring that information reaches the public in time to be useful. As the Ninth Circuit recently reaffirmed, "The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression." *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (internal citation and quotation marks omitted).

Given, among other things, the great public interest in access to the information at issue here, the years that DOL took to process CIR's and Mr. Evans's requests prior to this lawsuit, the time that has passed since this lawsuit was filed, the absence of any specific justification for a further extension from your e-mail (let alone for the open-ended stay you propose), our assessment that an appeal by DOL would not succeed on the merits, and CIR's prior stipulation to the generous extension DOL requested last year, we respectfully decline the proposed stipulation.

Regards,

Aaron Field

---

Aaron Field

Attorney at Law



100 Pine Street, Suite 350

San Francisco, California 94111

Telephone (Firm): 415.409.8900

Telephone (Direct): 415.842.2285

Fax: 415.409.8904



Please consider the environment before printing this e-mail

---

For further information about our firm or directions to our San Francisco or Walnut Creek offices, please visit our firm website at [www.cofolaw.com](http://www.cofolaw.com)

---

This electronic mail transmission is intended only for the addressee(s) shown above. It may contain information that is confidential or otherwise protected from disclosure as an attorney-client or attorney work-product privileged communication. Any review, dissemination, or use of this transmission or its contents by persons other than the addressee(s) is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at (415) 409-8900, and destroy this document.

---

**From:** Johann, Pamela (USACAN) <[Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov)>

**Sent:** Wednesday, February 14, 2024 2:35 PM

**To:** Aaron R. Field <[afield@cofolaw.com](mailto:afield@cofolaw.com)>; Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>

**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>;

Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>

**Subject:** RE: [EXTERNAL] Re: Available for a call?

Hi Aaron,

Hoping to follow up on this. Can you let me know if you agree to this stipulation?

Thanks,  
Pam

Pam Johann

Assistant United States Attorney, Deputy Civil Chief

Northern District of California

T: 415-436-7025

---

**From:** Johann, Pamela (USACAN)  
**Sent:** Tuesday, February 13, 2024 4:10 PM  
**To:** Aaron R. Field <[arfield@cofolaw.com](mailto:arfield@cofolaw.com)>; Victoria Baranetsky  
<[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>  
**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth  
<[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>  
**Subject:** RE: [EXTERNAL] Re: Available for a call?

Hi Aaron et al.,

Given your tight schedules, perhaps we can avoid a call altogether. As you know, we are one week away from the appeal deadline and disclosure deadline. The decision of whether to appeal is still under consideration by the Solicitor General. Given this, we are requesting that Plaintiffs agree to stay the disclosure order (1) pending the resolution of an appeal, if a notice of appeal is filed; or (2) in the event a notice of appeal is not filed, 21 days after the deadline for filing a notice of appeal.

Please let me know if this is acceptable to you, and I will prepare a stipulation to submit to the Court.

Thanks,  
Pam



Pam Johann

Assistant United States Attorney, Deputy Civil Chief

Northern District of California

T: 415-436-7025

---

**From:** Aaron R. Field <[arfield@cofolaw.com](mailto:arfield@cofolaw.com)>  
**Sent:** Tuesday, February 13, 2024 12:47 PM  
**To:** Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>; Johann, Pamela (USACAN) <[PJohann@usa.doj.gov](mailto:PJohann@usa.doj.gov)>  
**Cc:** Therese Y. Cannata <[tcannata@cofolaw.com](mailto:tcannata@cofolaw.com)>; Zachary E. Colbeth <[zcolbeth@cofolaw.com](mailto:zcolbeth@cofolaw.com)>; Danielle Ott <[dott@cofolaw.com](mailto:dott@cofolaw.com)>  
**Subject:** Re: [EXTERNAL] Re: Available for a call?

Pam,

I am also not available for a call today. I am flexible tomorrow afternoon. however. If you would like to connect, please let me know what you would like to discuss, so that I can prepare for our call, and when you are available tomorrow afternoon. If tomorrow afternoon does not work for you, please let me know, and I will send you some possible times on Thursday.

As a reminder, please copy me, my law partners Therese and Zach, and our paralegal Danielle, on all e-mail correspondence in this matter, in addition to Vickie. Thank you.

Regards,

Aaron Field

---

Aaron Field

Attorney at Law



100 Pine Street, Suite 350

San Francisco, California 94111

Telephone (Firm): 415.409.8900

Telephone (Direct): 415.842.2285

Fax: 415.409.8904



Please consider the environment before printing this e-mail

---

For further information about our firm or directions to our San Francisco or Walnut Creek offices, please visit our firm website at [www.cofolaw.com](http://www.cofolaw.com)

---

This electronic mail transmission is intended only for the addressee(s) shown above. It may contain information that is confidential or otherwise protected from disclosure as an attorney-client or attorney work-product privileged communication. Any review, dissemination, or use of this transmission or its contents by persons other than the addressee(s) is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at (415) 409-8900, and destroy this document.

---

**From:** Victoria Baranetsky <[vbaranetsky@revealnews.org](mailto:vbaranetsky@revealnews.org)>  
**Sent:** Tuesday, February 13, 2024 12:28 PM  
**To:** Johann, Pamela (USACAN) <[Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov)>; Aaron R. Field <[afield@cofolaw.com](mailto:afield@cofolaw.com)>  
**Subject:** Re: [EXTERNAL] Re: Available for a call?

Hi Pam.

I'm in wall to wall meetings until 5pm today. Can you reach out to Aaron, please.

Vickie

On Tue, Feb 13, 2024 at 11:59 AM Johann, Pamela (USACAN) <[Pamela.Johann@usdoj.gov](mailto:Pamela.Johann@usdoj.gov)> wrote:

|

Hi Vickie,

Do you have time this afternoon for a quick chat?

Thanks,  
Pam

Pam Johann

Assistant United States Attorney, Deputy Civil Chief

Northern District of California

T: 415-436-7025

---